

REMARKS

Claims 7-9 remain in this application.

Obviousness Rejection

Claims 7-9 were rejected under 35 U.S.C. 103(a) as being unpatentable over Johnson. (U.S. Pat. No. 4472461) ("Johnson") in view of either Hodgson (U.S. Pat. No. 3645835) ("Hodgson"), Metcalfe (U.S. Pat. No. 4559938) ("Metcalfe"), Tani et al (U.S. Pat. No. 4789413) ("Tani"), Ward (U.S. Pat. No. 5000172) ("Ward"), Kay (U.S. Pat. No. 5713842) ("Kay"), Plews (U.S. Pat. No. 5755681) ("Plews"), or Takemoto (EP 0353972) ("Takemoto"). (Paper No. 14 at 2.)

For the reasons set forth below, the rejection is traversed.

Johnson purports to disclose an apparatus and a method for making perforated adhesive tapes. (Col. 1, Ins. 6-8.) Johnson also purports to disclose an apparatus and a method for producing controlled discrete perforations in an adhesive-coated porous web such as cloth. (Col. 2, Ins. 13-17.) A substantially porous web 12, initially uncoated is directed towards the adhesive coating station 20. (Col. 3, Ins. 26-36.) Adhesive 28, which is substantially non-porous and non-permeable to a gas, is automatically spread onto the surface of the adhesive application roller 24. (Col. 3, Ins. 43-48.) As the porous web moves into contact with the roller, liquid adhesive is transferred onto the inner web surface. (Col. 3, Ins. 51-61.) The adhesive coated web travels an appropriate process rate of speed towards the gas perforating means 34 including gas directing tube 38. (Col. 4, Ins. 31-37.) Gas streams exiting from the plurality of openings 44 of the directing tube 38 impinge the adhesive coating 28 on the surface of the porous web resulting in a plurality of discontinuities or apertures 46. (Col. 4, Ins. 46-51.) Individual, cleanly demarcated perforations or apertures 46 are formed in the adhesive-coating 28, at the site of each gas jet impingement, by gas being forced through the substantially continuous adhesive-coating 28 adhered to the porous web. (Col. 4, Ins. 59-63.) The relative gas porosity of the web material and the thickness and consistency of the adhesive determines the gas pressure required to perforate the adhesive. (Col. 4, Ins. 63-69.) The gas-perforated adhesive-coated porous web is then passed through a conventional convection oven for curing or congealing of the adhesive coat. (Col. 5, Ins. 19-23.)

Hodgson purports to disclose a "moisture-vapor-permeable-sensitive adhesive material for use on animal skin and nails, comprising a backing material having a pressure-sensitive adhesive on at least substantially the whole of the body-adhering portion of at least one surface of said backing material, both said backing material and said adhesive being moisture vapor permeable and unaffected by water and at least one of said backing material and said adhesive comprising a synthetic polymer and being continuous and nonpermeable to liquid water..." (Col. 1, lns. 26-34.)

Metcalf purports to disclose a flexible film suitable for use as a backing in an adhesive medical dressing which film comprises a blend of polymers characterized in that the blend comprises a continuous matrix of 1,2 polybutadiene and an incompatible polymer which forms a discrete particulate phase within the continuous matrix and the film contains voids. (Col. 1, lns. 27-33.) The aperturing of the adhesive coated film can be provided by conventional methods including methods involving the use of punches and dies, heated needles or protruberances, hot gases and electrical spark discharge. (Col. 4, ln. 66 to Col. 5, ln. 3.) Suitable discontinuous adhesive layers can be any non-toxic, skin adhering pressure sensitive adhesive (Col. 3, lns. 50-52.)

Tani discloses a process for making permeable adhesive tapes. (Col. 1, lns. 7-8.) Permeable is defined by Tani to mean the ability to permeate gas as well as liquid water. (Col. 1, lns. 66-67.) The adhesive tape of Tani may be used for protecting wounds and avoiding maceration when adhered and maintained to the skin for a long time. (Col. 1, lns. 14-20.)

Ward purports to disclose a wound dressing system comprising a transparent or translucent dressing including at least one transparent or translucent layer having reference marks which are capable of being used to monitor the wound. (Col. 1, lns. 41-45.) The adhesive dressing comprises a backing layer having a pressure sensitive adhesive layer coated on one surface thereof, a removable protector covering the adhesive surface and extending beyond the backing layer at one or more edges thereof, and a support layer. (Col. 1, lns. 56-61.) Preferred materials forming the dressing or the backing layers are elastomeric moisture vapor transmitting films. (Col. 3, lns. 1-3.) The adhesive used may be any adhesive which is conventionally used for contact with the skin. (Col. 3, lns. 44-52.)

Kay purports to disclose a wound dressing which is a laminate of a thin film, an adhesive, and a release backing/pull-tab assembly. (Col. 5, lns. 44-46.) The wound dressing has a first layer that is impermeable to liquids and microbes but permeable to gasses and water vapor. (Col. 6, lns. 54-56.) An adhesive second layer is provided on the first layer. (Col. 6, lns. 56-57.) The adhesive layer is also permeable to gasses and water vapor. (Col. 6, lns. 58-59.) Adhesives suitable for this invention include those that possess controllable affinities for skin surfaces. (Col. 7, lns. 4-6.)

Plews purports to disclose a conformable material having a backing layer with an adhesive layer on the first surface, a removable protector covering the adhesive layer and a carrier layer on the non-adhesive surface of the backing layer. (Col. 1, lns. 61-67.) The conformable material may be suitable for use as a wound dressing. (Col. 3, lns. 24-25.) It may also be used as an adhesive tape, e.g., an adhesive medical tape. (Col. 3, lns. 36-37.) The adhesive must be compatible with the skin. (Col. 4, lns. 66-67.) Suitably the adhesive layer is applied to the skin-facing surface of the backing layer as a continuous layer. (Col. 5, lns. 23-24.)

Takemoto purports to disclose bandages for adhering to the skin that have an adhesive applied to the backing or other substrate in the form of tiny individually spaced deposits in particular arrays. (Col. 3, lns. 18-24.) The backings should be vapour and oxygen permeable; in the case of film, the film may be perforated to render it breathable. (Col. 6, lns. 23-28.)

In making the rejection, the Examiner admitted "that Johnson fails to teach the adhesive disposed in a 'pattern.'" (Paper No. 14 at 2.)

To fill the acknowledged gap, the Examiner relied on Hodgson, Metcalfe, Tani, Ward, Kay, Plews, or Takemoto as being drawn to the creation of medical tapes and the teaching of the use of a discontinuous pattern of adhesive. (Paper No. 14 at 2.) The Examiner then concluded that "[i]t would have been obvious to a person having ordinary skill in the art to utilize the adhesive of Johnson in a discontinuous pattern" and that "such a modification would have been motivated by the desire to reduce costs by using less adhesive." The Examiner believed that "[p]erforating nonadhesive areas would also reduce the gas pressure needed to perforate the tape, thereby reducing energy costs and the problem of 'floating (cols. 4-5, lines 65-15).'" The

Examiner then concludes that “[a] discontinuous adhesive layer would also increase the breathability of the bandage and increase the comfort to the wearer.” (Paper No. 14 at 2.)

At the outset, it is respectfully submitted that it is unclear which reference the Examiner relied on to state the “problem of floating.” The Examiner is asked to clarify this fact in the next paper issued in the captioned application.

Additionally, the Examiner’s assertion that “Applicant argues that Johnson fails to teach the adhesive disposed in a ‘pattern’” is not supported by the written record in the captioned application. Applicant has not asserted that Johnson “teach[es]” anything, much less that Johnson “teach[es]” as much as the Examiner has asserted. The record is clear that:

(1) “The rejection stated [sic] that the Johnson’s abstract discloses ‘said adhesive is disposed in a pattern.’ However, as seen above, no such disclosure can be found in the abstract.” (Paper No. 13 at 4.)

(2) “Johnson discloses that adhesive is applied to the entire surface of the porous web to form an adhesive tape and apertures or perforations are formed in the adhesive coatings prior to curing.” (*Id.*)

It is respectfully submitted that the Examiner’s characterization of the record, particularly positions taken by Applicant or Applicant’s representative, is not accurate and the Examiner is asked to make correction to the record in the next paper issued in the captioned application.

As is fundamental, a *prima facie* case of obviousness must be based on facts, “cold hard facts.” When the rejection is not supported by facts, it cannot stand.


“Determination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the patented invention.” *ATD Corp. v. Lydall, Inc.*, 159 F.3d 534, 546, 48 USPQ2d 1321, 1329 (Fed. Cir. 1998). There must be a teaching or suggestion within the prior art, within the nature of the problem to be solved, or within the general knowledge of a person of ordinary skill in the field of the invention, to look to particular sources, to select particular elements, and to combine them as combined by the inventor. See *Ruiz v. A.B. Chance Co.*, 234 F.3d 654, 665, 57 USPQ2d 1161, 1167 (Fed. Cir. 2000); *ATD Corp.*, 159 F.3d at 546, 48 USPQ2d at 1329; *Heidelberger Druckmaschinen AG v. Hantscho Commercial Prods., Inc.*, 21 F.3d 1068, 1072, 30 USPQ2d 1377, 1379 (Fed. Cir. 1994) (“When the patented invention is made by

combining known components to achieve a new system, the prior art must provide a suggestion or motivation to make such a combination.”).

The Examiner has failed to present any facts that suggest or motivate one of ordinary skill in the art to design the claimed nonwoven. The Examiner appears to focus on the adhesive pattern in making the rejection. Yet such focus ignores the claimed nonwoven material as a whole. It is respectfully submitted that the Examiner was required to examine the claim as whole, not the individual elements of claimed subject matter. The record created by the Examiner is devoid of any facts that would motivate one of ordinary skill in the art to provide a nonwoven material having, among other things, the combination of apertures and disposition of adhesive. For this reason, the rejection is improper and should be withdrawn.

Finally, the Examiner is invited to call the applicants' undersigned representative if any further action will expedite the prosecution of the application or if the Examiner has any suggestions or questions concerning the application or the present Response. In fact, if the claims of the application are not believed to be in full condition for allowance, for any reason, the applicants respectfully request the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP § 707.07(j) or in making constructive suggestions pursuant to MPEP § 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,

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